

Exhibit C



370 LEXINGTON AVENUE
SUITE 1706
NEW YORK, NY 10017
212 682 1852
212 682 1892 FAX
ahawkins@frankllp.com
www.frankllp.com

FREEDOM OF INFORMATION ACT APPEAL

December 21, 2018

VIA EMAIL & U.S. MAIL

Chief FOIA Officer
Freedom of Information Act Appeals
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@consumerfinance.gov

Re: *Appeal of Denial of FOIA Request #BCFP-2018-0782-F*

Dear Chief FOIA Officer,

I am writing you concerning the above-referenced Freedom of Information (“FOIA”) request to the Bureau of Consumer Financial Protection (“CFPB” or “Bureau”). We appeal the CFPB’s denial of our request, pursuant to 12 C.F.R. § 1070.21.

The Request

On September 19, 2018, we submitted a FOIA request (the “Request”)¹ to the CFPB pertaining to findings of fact that the CFPB made in connection with two matters: (1) *Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Loan Trust et al.*, No. 1:17-cv-01323-UNA (D. Del. 2017) (filed Sept. 18, 2017) (the “NCSLT Action”); and (2) *In re Transworld Sys., Inc.*, Admin. Proc. No. 2017-CFPB-0018 (Consumer Fin. Prot. Bureau 2017) (filed Sept. 18, 2017) (the “Transworld Action”).²

The Request specified that the responsive documents would include, without limitation, transcripts (the “Transcripts”) of any investigation-hearing testimony by the following individuals (the “Affiants”):

¹ A copy of the Request is attached hereto as Exhibit A.

² We serve as Plaintiffs’ counsel in two consolidated civil actions brought on behalf of proposed classes of consumers alleging consumer-protection law violations against defendants including Transworld Systems, Inc. (“Transworld”) and four of the National Collegiate Student Loan Trusts (the “Trusts”): *Bifulco et al. v. Nat'l Collegiate Student Loan Trust 2004-2 et al.*, No. 1:18-cv-07692 (PGG) (S.D.N.Y. 2018); *Michel et al. v. Nat'l Collegiate Student Loan Trust 2007-2 et al.*, No. 1:18-cv-01781 (PGG) (S.D.N.Y. 2018). Many of our clients’ allegations in those cases reflect the Bureau’s findings of fact in the above-referenced Actions.

FRANK LLP

CFPB Chief FOIA Officer
December 21, 2018
Page 2

- Chandra Alphabet;
- Francesca Giampiccolo;
- Kristian Knochel;
- James Cummins;
- Dudley Turner;
- Danielle Gray;
- Colleen Morgan;
- Jonathan Boyd; and/or
- Demetrius Cyrus Nickens.

The CFPB found that the Trusts and Transworld systematically obtained settlements and default judgments against consumers sued in state court over alleged loan debts purportedly owed to the Trusts by submitting affidavits that falsely represent that the affiant has personal knowledge of proof of indebtedness. *E.g.*, Compl. ¶ 3, *NCSLT Action*, No. 1:17-cv-01323-UNA (D. Del. Sept. 18, 2017) (ECF No. 1). The CFPB further found that these affidavits were notarized by individuals who did not witness them being signed, as the law requires. *Id.*

The Affiants named in our Request who signed or notarized these affidavits are employees or agents of the Trusts and Transworld (or a predecessor-in-interest). *See* Am. Compl. ¶¶ 63–155, *Michelo*, No. 18-cv-1781 (S.D.N.Y. Sept. 14, 2018) (ECF No. 60); Compl. ¶¶ 62–152, *Bifulco*, No. 18-cv-7692 (S.D.N.Y. Aug. 23, 2018) (ECF No. 1).

Some or all of the Affiants were required to testify to the CFPB in response to civil investigative demands issued pursuant to the CFPB’s subpoena powers, *see* 12 U.S.C. § 5562(c)(1), and the CFPB used this testimony in its factfinding against the Trusts and Transworld, *see* Decision & Order Den. Francesca Giampiccolo’s Pet. Set Aside Civil Investig. Demand (Consumer Fin. Prot. Bureau Aug. 1, 2015); Decision & Order Den. Transworld Sys. Inc.’s Pet. Appear at Oral Exam. of Chandra Alphabet (Consumer Fin. Prot. Bureau May 29, 2015).³

³ The CFPB’s database of documents concerning petitions related to civil investigative demands (“CID”) is available at: <https://www.consumerfinance.gov/policy-compliance/enforcement/petitions/?page=1#o-filterable-list-controls> (last visited Dec. 21, 2018).

FRANK LLP

CFPB Chief FOIA Officer
December 21, 2018
Page 3

Following discussions with Senior FOIA Analyst Danielle Duval Adams, we agreed on November 19, 2018 to narrow our Request to documents reflecting the Transcripts, though we expressly reserved the right to re-commence the broader Request at our discretion.

In a letter dated December 3, 2018, and signed by FOIA Manager Raynell D. Lazier (the “Denial”), the CFPB denied the Request as narrowed, arguing that the 557 pages of responsive documents must be withheld in full pursuant to 5 U.S.C. § 552(b)(4) (“Exemption 4”), -b(7)(A) (“Exemption 7(A)”), and -(b)(7)(E) (“Exemption 7(E)').⁴

The Denial paraphrased the statutory language comprising Exemptions 4, 7(A), and 7(E), provided a generalized overview of how courts tend to interpret them, and stated that Ms. Lazier had deemed them applicable based on unspecified review of the Transcripts. The Denial failed to provide “a relatively detailed justification, specifically identifying the reasons why [these Exemptions are] relevant and correlating those [reasons] with the particular part[s] of [the] withheld document[s] to which they apply.” *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) (citations omitted); *accord, e.g., Isiwele v. U.S. Dep’t of Health & Human Servs.*, 85 F. Supp. 3d 337, 356 (D.D.C. 2015).

Argument

I. The CFPB Has Failed To Meet Its Burden Of Establishing That Exemption 4 Applies To The Transcripts

The CFPB has failed to demonstrate that the Transcripts should be withheld under Exemption 4 because they consist of “confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information.” Denial, at 2 (citing 5 U.S.C. § 552(b)(4)).⁵ The CFPB cannot meet its heightened standard for Exemption 4 withholding,⁶ as the very nature of the information provided by the Affiants means that it could not possibly be sensitively “commercial” or “confidential” for.

⁴ The Denial is attached hereto as Exhibit B.

⁵ Exemption 4 permits an agency to withhold from FOIA disclosure certain “trade secrets and commercial or financial information [that have been] obtained from a person [or entity] and [that are] privileged or confidential” 5 U.S.C. § 552(b)(4). However, when an agency invokes one of the various FOIA exemptions in denying a FOIA request, it bears the burden of demonstrating the applicability of the cited exemption. *E.g., Ctr. for Auto Safety v. U.S. Dep’t of Treasury*, 133 F. Supp. 3d 109, 128 (D.D.C. 2015); *see also* 5 U.S.C. § 552(a)(4)(B). The Denial failed to satisfy the CFPB’s burden because its “conclusory and generalized” invocation of Exemption 4 is “unacceptable.” *Morley v. CIA*, 508 F.3d 1108, 1115 (D.C. Cir. 2007) (internal quotation marks and citations omitted).

⁶ The Denial seems to invoke the highest standard for Exemption 4 withholding. Denial at 2. Oddly, it also makes note of the lower standard, which applies Exemption 4 to “information that was voluntarily submitted to the government” and that “the provider would not customarily make available to the public.” *Id.* The CFPB knows well that the District Court for the District of Columbia has barred it from arguing that testimony provided in response to its CIDs—like the Affiants’ testimony here—is nonvoluntary for purposes of Exemption 4’s lower standard. *Frank LLP v. Consumer Fin. Prot. Bureau*, 288 F. Supp. 3d 46, 60–62 (D.D.C. 2017) (Cooper, J.) (prohibiting CFPB from using Exemption 4’s “nonvoluntary”

FRANK LLP

CFPB Chief FOIA Officer
 December 21, 2018
 Page 4

The Affiants’ testimony about the affidavits that they signed does not qualify as “confidential” for the purpose of Exemption 4, because it reflects information that Transworld and the Trusts could have been legally required to disclose to state courts in connection with obtaining judgments against consumers. *Cf. Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (Exemption 4 not applicable to documents that regulated entities had to disclose in order to secure concessioners’ rights); *Ctr. for Auto Safety v. U.S. Dep’t of Treasury*, 133 F. Supp. 3d 109, 120–21 (D.D.C. 2015) (Exemption 4 not applicable to documents that regulated entities had to disclose in order to receive government benefits). The fact that the scheme here was predicated upon obtaining default judgments via affidavit only—thereby avoiding actual judicial scrutiny by state courts—does not suddenly render the requested documents confidential.

There is no way that the Trusts and Transworld’s “competitors could use the [requested] information, if disclosed, to their own competitive advantages” *Ctr. for Auto Safety*, 133 F. Supp. 3d 109 at 129 (emphasis added). The Denial does not establish that the Trusts even “have competitors” in the business of securitizing and servicing private student loans originated by third parties. *Niskanen Ctr.*, 328 F. Supp. 3d at 12. And, even assuming such competition exists, the Affiants’ testimony reflects information that the Trusts and Transworld either did place into the public domain, or were prepared to. *See, e.g., Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (“If the information is freely or cheaply available from other sources, . . . it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm to the submitter.”).⁷

Such testimony does not implicate the commercial strategy of the Trusts—i.e., securitizing bundles of student loans—or any other “costs and opportunities faced by [any other competing] members of th[is] industry” *Id.* Importantly, the Affiants’ testimony cannot be withheld under Exemption 4 merely because it might disclose internal legal strategizing by the Trusts and Transworld. *See Niskanen Ctr., Inc. v. U.S. Dep’t of Energy*, 328 F. Supp. 3d 1, 12 (D.D.C. 2018) (denying agency’s Exemption 4 withholding, over provider’s objections that disclosure of “legal memorand[a and] strategic plan[s]” would reveal “decisions regarding private litigation”).

Finally, the CFPB does not provide a tailored analysis explaining how the requested documents are “commercial.” “Defining ‘commercial’ to include everything used by a company engaged in commerce is overly expansive, especially in light of the [D.C.] Circuit’s admonition that ‘not every bit of [purportedly “commercial”] information submitted to the government by a commercial entity qualifies for protection under Exemption 4’” *Nat'l Bus. Aviation Ass'n v. FAA*, 686 F. Supp. 2d 80, 85 (D.D.C. 2010) (quoting *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

standard to withhold information provided by regulatees pursuant to CID). Thus, the CFPB must satisfy the higher standard here. In any event, the CFPB could not even satisfy the lower standard, for the same reasons set forth herein.

⁷ *See also* Note 3, *supra* (CFPB publicizes online in 2015 that it is investigating the Trusts and Transworld, and deposing the Affiants in connection with the investigation).

FRANK LLP

CFPB Chief FOIA Officer
December 21, 2018
Page 5

II. The CFPB Has Failed To Meet Its Burden Of Establishing That Exemption 7(A) Applies To The Transcripts

The CFPB’s reliance on Exemption 7(A), which permits withholding where disclosure would “interfere with enforcement proceedings,” 5 U.S.C. § 552(b)(7)(A), is misplaced.

Exemption 7(A) is not applicable here because disclosure of the Transcripts cannot “reasonably be expected to harm the government’s case[es] in court” against the Trusts and/or Transworld. *North v. Walsh*, 881 F.2d 1088, 1098 (D.C. Cir. 1989). Indeed, there “are no longer pending or reasonably anticipated” any court proceedings in which the CFPB’s position would be impaired by immediate disclosure of the Transcripts. *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir. 2014) (internal quotation omitted).

The action against Transworld is resolved. See Consent Order, *In re Transworld Sys., Inc.*, Admin. Proc. No. 2017-CFPB-0018 (Consumer Fin. Prot. Bureau Sept. 18, 2017) (Document 1). And while the action against the Trusts continues in the District of Delaware, the litigation there is such that disclosure of the Transcripts cannot “reasonably be expected to interfere with [that] proceeding.” *North*, 881 F.2d at 1100. That litigation now focuses on contractual issues pertaining to how much money the individual participants in the Trusts’ securitization (who have intervened in the action) must contribute towards ensuring fraudulent affidavits never again are used to procure default judgments. However, the fact that such lawbreaking did occur is presumed true. See *Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Trust et al.*, No. 17-1323 (MN), 2018 U.S. Dist. LEXIS 179914, at *17 (D. Del. Oct. 19, 2018) (stressing that the litigation in that case focuses on “relevant parties [] protecting their contractual rights” (emphasis added)).⁸. There is no chance that releasing the Affiants’ testimony would interfere with these contract-law disputes.

Moreover, the CFPB has already publicized so much information about the deposing of the Affiants that Exemption 7(A) withholding is no longer appropriate. See *Yuanda Enter., Co. v. U.S. Customs & Border Prot.*, 404 F. Supp. 2d 9, 14 (D.D.C. 2005) (approving Exemption 7(A) withholding where disclosure would involve the risk of “inform[ing] the public [for the first time] of the evidence sought and scrutinized in this type of investigation”). Even before the CFPB issued its investigative findings against the Trusts and Transworld, it had already publicized not only the investigation, but also that it was deposing the Affiants in connection therewith. See Note 3, *supra*. Thus, it is already common knowledge how the CFPB reached its findings concerning the Trusts and Transworld’s affidavit practices, and there is no risk that disclosure will cause interference with enforcement for the purposes of Exemption 7(A).

⁸ See also “Forward Movement in the Bureau of Consumer Financial Protection’s Student Loan Litigation: What This Means for Securitization”, Cadwalader, Wickersham & Taft LLP (Client Memo, Nov. 2, 2018), available at <https://www.cadwalader.com/resources/clients-friends-memos/forward-movement-in-the-bureau-of-consumer-financial-protections-student-loan-litigation-what-this-means-for-securitization#> (counsel for amicus industry group describes the District of Delaware litigation as involving contractual disputes over which securitization participants will pay how much for future compliance costs).

FRANK LLP

CFPB Chief FOIA Officer
December 21, 2018
Page 6

III. The CFPB Has Failed To Meet Its Burden Of Establishing That Exemption 7(E) Applies To The Transcripts

The CFPB’s reliance on Exemption 7(E) is inapposite, as there is no possibility that disclosure of the Transcripts “might increase the risk that a law will be violated or that past violators will escape legal consequences.” *Pub. Emps. for Envtl. Responsibility v. U.S. Section, Int’l Boundary & Water Comm’n*, 740 F.3d 195, 205 (D.C. Cir. 2014) (internal quotation marks and citation omitted).⁹

Exemption 7(E) only “pertains to investigative techniques and procedures generally unknown to the public.” *Albuquerque Publ’g Co. v. U.S. Dep’t of Justice*, 726 F. Supp. 851, 857 (D.D.C. 1989) (emphasis added); *see Pub. Emps. for Envtl. Responsibility, Rocky Mountain Chapter v. U.S. Envtl. Prot. Agency*, 978 F. Supp. 955, 962 (D. Colo. 1997) (citing *Wilkinson v. FBI*, 633 F. Supp. 336, 349 n.25 (C.D. Cal. 1986)) (rejecting agency’s attempt to avoid disclosing documents that would likely reveal agency’s use of “commonly known” investigative technique and adherence to “predictable” internal guidelines); *cf. Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 160 F. Supp. 3d 226, 242–43 (D.D.C. 2016) (agency not required to disclose nonpublic information concerning emerging drone technologies).

The techniques and procedures that the CFPB utilized in investigating the Trusts and Transworld’s use of fraudulent affidavits are self-evident. The CFPB deposed the Affiants, *see Note 3 and accompanying text, supra*, and thereby determined that the Affiants had attested to personal knowledge of proof evidencing individual consumers’ indebtedness when, in fact, they had done nothing more than glance at unattributed data on a computer screens, *see Compl. ¶¶ 24–42, NCSLT Action*, No. 1:17-cv-01323-UNA (D. Del. Sept. 18, 2017) (ECF No. 1).

The Denial’s conclusory explanation that “the techniques and procedures at issue are not well known to the public” does not provide a sufficient basis for the CFPB’s invocation of Exemption 7(E). *See Dent v. Exec. Office for U.S. Attorneys*, 926 F. Supp. 2d 257, 272–73 (D.D.C. 2013) (agencies may not “[‘]rely upon . . . vaguely worded categorical description[s]’” of investigative techniques in arguing that Exemption 7(E) shields documents from FOIA disclosure) (quoting *Clemente v. FBI*, 741 F. Supp. 2d 64, 88 (D.D.C. 2010)).

IV. The CFPB Failed To Disclose All “Reasonably Segregable Portions” Of The Responsive Documents

Even assuming that select portions of the requested documents do contain information exempt from disclosure under the FOIA exemptions invoked here, the CFPB has neglected its

⁹ Exemption 7(E) permits an agency to withhold from FOIA disclosure information that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law” 5 U.S.C. § 552(b)(7)(E). Importantly, the D.C. Circuit has made clear that it “applie[s] the ‘risk circumvention of the law’ requirement both to records containing guidelines and to records containing techniques and procedures.” *Pub. Emps. for Envtl. Responsibility*, 740 F. 3d at 204 n.4 (emphases added).

FRANK LLP

CFPB Chief FOIA Officer
December 21, 2018
Page 7

obligation to identify and segregate the exemptible portions, and disclose to us those portions of the documents to which these exemptions do not apply. 5 U.S.C. § 552(b); *see, e.g.*, *Judicial Watch, Inc. v. U.S. Dep’t of Hous. & Urban Dev.*, 20 F. Supp. 3d 247, 259 (D.D.C. 2014) (an agency, in responding to a FOIA request, “always car[ies the] burden of showing that withheld documents contain no ‘reasonably segregable’ factual information . . .”); *see also Stolt-Nielsen Transp. Grp. Ltd. v. United States*, 534 F.3d 728, 734 (D.C. Cir. 2008) (“[‘A]n agency cannot justify withholding an entire document simply by showing that it contains some exempt material.””) (quoting *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977)).

As the District Court for the District of Columbia recently held in an analogous case, the CFPB may only could apply Exemption 7 withholding to transcripts of depositions of professional affiants where the nonexempt portions thereof already had been released to the requester. *Frank LLP v. Consumer Fin. Prot. Bureau*, 327 F. Supp. 3d 179, 183–87 (D.D.C. 2018) (stressing that CFPB had already released redacted versions of transcripts from depositions of professional affiants found to have falsely attested to personal knowledge of proof of indebtedness).

It simply is not possible that every single word of the Transcripts is exemptible under the limited FOIA exemptions invoked here, and the CFPB’s failure to recognize this calls into question all of its Denial’s reasoning.

Conclusion

We ask that the CFPB immediately disclose the Transcripts, or otherwise respond to this appeal within 20 days’ time. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Should you have any questions for us concerning this matter, please do not hesitate to contact me.

Sincerely,



Asher Hawkins

FRANK LLP
370 Lexington Ave.
Suite 1706
New York, NY 10017
ahawkins@frankllp.com
Office: (212) 682.1852
Fax: (212) 682.1892

cc: Office of General Counsel (via U.S. Mail)
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Encl. (2)

Exhibit A



ATTORNEYS AT LAW

370 LEXINGTON AVENUE
SUITE 1706
NEW YORK, NY 10017
212 682 1852
212 682 1892 FAX
ahawkins@frankllp.com
www.frankllp.com

September 19, 2018

VIA U.S. MAIL & EMAIL

Chief FOIA Officer
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@consumerfinance.gov

Re: FOIA Request Concerning National Collegiate Student Loan Trusts & Transworld

Dear CFPB FOIA Officer,

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

This request pertains to the following matters:

- *Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Loan Trust et al.*, No. 1:17-cv-01323-UNA (D. Del. 2017) [hereinafter “NCSLT Action”].
- *In re Transworld Sys., Inc.*, Admin. Proc. No. 2017-CFPB-0018 (Consumer Fin. Prot. Bureau 2017) [hereinafter “Transworld Action”].

We request that the Bureau provide us with copies of the documents in the Bureau’s possession that pertain to the facts set forth in (1) the Complaint in the NCSLT Action (entered therein at Dkt. No. 1), (2) the Proposed Consent Judgment in the NCSLT Action (entered therein at Dkt. No. 3-1), and (3) the Consent Order in the Transworld Action (entered therein at Doc. 1).

Such documents in the Bureau’s possession include, but are not necessarily limited to, transcripts of any investigation-hearing testimony by the following individuals:

- Chandra Alphabet;
- Francesca Giampiccolo;
- Kristian Knochel;
- James Cummins;
- Dudley Turner;

FRANK LLP

CFPB Chief FOIA Officer
September 19, 2018
Page 2

- Danielle Gray;
- Colleen Morgan;
- Jonathan Boyd; and/or
- Demetrius Cyrus Nickens.

In order to help you determine our status for the applicability of any fees, we are requesting these documents because we serve as Plaintiffs' counsel in two civil action brought on behalf of proposed classes of consumers alleging consumer-protection law violations against defendants including Transworld and four National Collegiate Student Loan Trusts.¹

Many of our clients' allegations reflect the Bureau's findings of fact in the above-referenced Actions.

We are willing to pay fees for this request up to a maximum of \$1,000, without further consultation. If you estimate that the fees will exceed this limit, please contact me.

If you have any questions about processing this request, please do not hesitate to telephone me at any time. My direct dial is below.

This request is being submitted via both email and regular mail. Please feel free to send the requested documents via either email or regular mail, using the contact information below. Thank you in advance for your prompt attention to this request.

Sincerely,



Asher Hawkins

FRANK LLP
370 Lexington Avenue
Suite 1706
New York, NY 10017
ahawkins@frankllp.com
Tel.: (212) 682.1852
Fax: (212) 682.1892

¹ These actions are: *Bifulco et al. v. Nat'l Collegiate Student Loan Trust 2004-2 et al.*, No. 1:18-cv-07692 (PGG) (S.D.N.Y. 2018); *Michelo et al. v. Nat'l Collegiate Student Loan Trust 2007-2 et al.*, No. 1:18-cv-01781 (PGG) (S.D.N.Y. 2018).

Exhibit B

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #BCFP-2018-0782-F

December 3, 2018

Mr. Asher Hawkins
Frank, LLP
275 Madison Avenue, Suite 705
New York, NY 10016

Dear Mr. Hawkins:

This letter is in final response to your Freedom of Information Act (FOIA) request dated September 19, 2018 to the Bureau of Consumer Financial Protection (BCFP). Your request sought c of the documents in the Bureau's possession that pertain to the facts set forth in (1) the Complaint in the NCSLT Action (entered therein at Dkt. No. 1), (2) the Proposed Consent Judgment in the NCSLT Action (entered therein at Dkt. No. 3-1), and (3) the Consent Order in the Transworld Action (entered therein at Doc. 1).

You indicated that such documents in the Bureau's possession include, but are not necessarily limited to, transcripts of any investigation-hearing testimony by the following individuals:

- Chandra Alphabet;
- Francesca Giampiccolo;
- Kristian Knochel;
- James Cummins;
- Dudley Turner;
- Danielle Gray;
- Colleen Morgan;
- Jonathan Boyd; and/or
- Demetrius Cyrus Nickens.

Per an email conversation with Danielle Adams on November 29, 2018, you agreed to narrow your FOIA request to the transcripts of investigation-hearing testimony.

A search of our Office of Enforcement for documents responsive to your narrowed request located a total of 557 pages. After review of the pages, we have determined the 557 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(4), (b)(7)(A), and (b)(7)(E).

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. I reviewed the responsive documents and relevant case law, and I determined that the documents are exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests.

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D), 7(E), and/or 8.

Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I determined that disclosure of law enforcement investigative hearings could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request.

For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division